THE HONOURABLE SRI JUSTICE J. CHELAMESWAR
AND
THE HON'BLE SRI JUSTICE D. APPA RAO

W.P. No. 15505 of 2006

Dated: 09.11.2006

M/s Ramesh Steel Re-rolling Mills, Flat No.1A,
1st Floor, Jainanjani Apartments, B.K. Road,
Balkampet, Ameerpet, Hyderabad.

..Petitioner

Vs

The Commissioner of Customs & Central
Excise (Apeals) Lal Bahadur Stadium Road,
Basheerbagh, Hyderabad and another.

..Respondents.

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O R D E R (per the Hon'ble Sri Justice D. Appa Rao)

The petitioner seeks a Writ of Mandamus directing the 1st respondent, the Commissioner of Customs & Central Excise (Appeals) to dispose of restoration application dated 1.5.2006 for restoration of the appeal preferred by it under Section 35F of Central Excise Act, 1944.

2) The petitioner was engaged in the manufacture of M.S. Rods and CTD bars of non-alloy steel falling under Chapter 72 of the Schedule to the Central Excise and Tariff Act, 1985. It had availed the scheme under Rule 96 ZP(3) of the Central Excise Rules, 1944 for the purposes of payment of excise duty. Since, it was in financial distress, it could not make the payment of the duty. It had taken a plea before R.1 in the assessment proceedings of that as the unit was ultimately closed with effect from 1.11.1998, there was no liability to pay any duty. However, the 2nd respondent, the Deputy Commissioner of Central Excise in his assessment proceedings held that it was liable to pay a duty of Rs.72,257/- with interest @ 18% per annum under Section 3-A of the Central Excise Act. As against the orders of the 2nd respondent, the petitioner preferred an appeal before the 1st respondent and also sought exemption from pre-deposit of the duty and interest. The 1st respondent by an order dated 21.11.2000 directed the petitioner to pay a sum of Rs.40,000/- within a period of one month. Since the factory has been seized under *Panchanama* dated 8.10.1998, it could not fulfill the pre-deposit and consequently the appeal was dismissed. Earlier, when 2nd respondent levied duty for the period after 1.11.1998, an appeal was preferred and the 1st respondent opined that no duty need be paid and be recovered. Later, the petitioner has filed an application for restoration of the appeal after

making a pre-deposit of Rs.40,000/-. However, the 1st respondent did not dispose of the restoration application dated 1.5.2006 filed for restoration of the appeal.

3) The respondents filed counter admitting the various proceedings held against the petitioner. However they denied that the petitioner was not liable for payment of duty. The appeal cannot be reviewed after a gap of six years and it was barred by limitation. Therefore, they prayed for dismissal of the writ petition.

4) Heard, learned counsel for the parties.

5) Admittedly, the entire amount, which the petitioner was required to deposit as a condition for hearing an appeal has already been deposited. In somewhat, a similar case, the Supreme Court in **Makharia Traders V. Collector**[1], after considering the fact that the petitioner deposited the entire amount as required for preferring an appeal has set aside the order of dismissal and directed hearing of the appeal on merits.

6) Admittedly, the very 1st respondent by Order dated 20.11.2003, allowed the appeal holding that the writ petitioner was eligible for benefit of abatement from payment of duty for the period of closure of mill. The impugned order pertains to November 1998. The 1st respondent rejected the appeal solely on the ground that pre-deposit was not made. In view of the fact that it had complied the condition of pre-deposit, we are of the opinion that the interest of justice would have been met if application was heard. In view of the hardship pleaded, we are of the opinion that the request of the petitioner could be acceded. Accordingly, the 1st respondent is directed to dispose of the restoration application on merits.

7) The Writ Petition is allowed accordingly. No costs.

JUSTICE J. CHELAMESWAR

JUSTICE D. APPA RAO,

09th November 2006.

BCS

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[1] 2003(156) ELT – A - 269